
MOSAFE

Missourians Stopping Adult Financial Exploitation



**Financial exploitation is a crime.
We need your help to stop it.**



Missouri Department of Health & Senior Services
www.dhss.mo.gov

<p>Missourians Stopping Adult Financial Exploitation (MOSAFE)</p>
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A Resource Manual for Banks and Credit Unions

Sponsored by:

Missouri Department of Health and Senior Services
and

- AARP
- Missouri Alliance of Area Agencies on Aging
- Missouri Association of Public Administrators
- Missouri Bankers Association
- Missouri Credit Union Association
- Missouri Department of Health and Senior Services
- Missouri Independent Bankers Association
- Missouri Office of the Attorney General
- Missouri Office of the Lieutenant Governor
- Missouri Sheriffs' Association
- Missouri Police Chiefs Association

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I. INTRODUCTION

This resource manual is about financial exploitation of the elderly and disabled. This fast-growing crime destroys thousands of Missouri lives. We need your help to stop it.

A bank or credit union employee can be designated as a trainer and use this manual to educate co-workers on the principal warning signs of financial exploitation, and what they can do to prevent it. It's all part of MOSAFE—Missourians Stopping Adult Financial Exploitation—launched by Missouri's Department of Health and Senior Services (DHSS).

Financial exploitation occurs when there is an illegal use of a vulnerable adult's resources for another person's gain. The vulnerable adult is at least 60 years old, or disabled and between 18 and 59. He or she is tricked or coerced into handing over money to a son, daughter, relative or stranger.

Nationwide, financial exploitation is the third most frequent type of abuse, neglect and/or exploitation of vulnerable adults. Chances are good that if one of your elderly or disabled customers is being exploited financially, he or she is being victimized in other ways, too. Missouri's Department of Health and Senior Services serves as the Adult Protective Services agency for your elderly and disabled customers and is mandated to investigate reports of abuse, neglect or exploitation.

Bank and credit union employees are in a position to combat financial exploitation because it often occurs in a financial setting when a victim comes in to cash a check or withdraw money. It's always a good policy for banks to have a protocol specifying how employees should react if they suspect or encounter financial exploitation.

In the following pages, you'll learn about typical victims and abusers in financial exploitation. If you suspect one of your elderly or disabled customers is being exploited, we'll tell you whom to call. We've even included three real-life cases at the back of this manual that can be used as handouts to facilitate discussion.

There's so much to learn about financial exploitation. This manual is a starting point and part of a kit that contains a CD, DVD, brochure and other training materials. If you need another kit, please call the Department of Health and Senior Services Information and Referral line, 1-800-235-5503. The call is free.

Thank you for taking time to learn about financial exploitation and how you can help prevent it. We feel confident your customers will agree it's good business and the right thing to do. Financial institutions in other states that have promoted and participated in projects like MOSAFE have experienced a positive public-relations boom, especially in their customers' eyes.

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II. GOALS

MOSAFE stands for “Missourians Stopping Adult Financial Exploitation” and has four goals:

To:

- Stop attempted or ongoing financial exploitation
- Recover funds and assets for victims
- Train bank and credit union employees on how to detect and report financial exploitation
- Increase consumer and law enforcement awareness of financial exploitation

III. WHAT IS FINANCIAL EXPLOITATION?

Financial exploitation of seniors and disabled persons has been called “the crime of the 21st century.” It occurs when there is an illegal use of a vulnerable adult’s resources for another person’s profit or gain.

The typical victim is an elderly female who lives alone and suffers some form of dementia or physical impairment, and is too confused or ashamed to report the crime.

The typical perpetrator is one of her adult children.

Nationwide, financial exploitation is the third most frequent type of abuse, neglect and/or exploitation of seniors and the disabled. Advanced age increases a person’s chance of becoming victimized. For instance, almost one-half of all victims are 80 or older, but only 3 percent of victims are between 60 and 64 years old. This late-life trend is the result of mental and physical impairments that limit one’s ability to understand and make reasoned decisions.

Financial exploitation of senior and disabled adults can be life threatening. The Sept/Oct 2000 issue of *Victimization of the Elderly and Disabled* says the mortality rate of financial exploitation victims is three (3) times higher than those who have not been exploited. What’s more, when a person’s funds are depleted, he or she has limited options and independence. A loss of independence often results in depression, which is often life threatening for a senior or disabled adult.

Missouri’s Department of Health and Senior Services (DHSS) receives and investigates reports of financial exploitation of the elderly and disabled. In 2004, DHSS received 1,184 reports. Though this number is on the rise, the crime is vastly underreported because of the emotional bond between victim and perpetrator. Often seniors and disabled persons are socially isolated and physically and emotionally dependent on a son, daughter, or caregiver, making it nearly

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impossible for them to report for fear of being institutionalized.

Types of Exploitation

Type I— (Personal Relationship)

An elderly or disabled adult is more likely to be financially exploited by someone he or she knows, such as a son, caregiver or acquaintance, rather than a stranger. A son or daughter can use a variety of exploitive methods, such as theft, mismanagement, forgery, undue influence, misrepresentation, and fraud. Often, the son, daughter or caregiver abuses and neglects a loved one in other ways besides taking his or her money.

Type II—(Strangers & Scam Artists)

Strangers also exploit the elderly and disabled. The methods they use to scam elderly and disabled adults are person-to-person confidence crimes, and mail and telephone fraud.

Financial exploitation describes a set of crimes against the elderly and disabled. Stealing, forgery and identity theft are part of this crime. So are fraudulent use of a credit/debit/ATM card, fraudulent procurement of a credit or debit card, and misappropriation of property from an in-home services client. The violation can be a misdemeanor or a felony—it depends upon how much is stolen and the severity of the crime. Table 1 below lists the crimes and possible offenses.

Table 1

Missouri Laws Violated by Persons Committing Financial Exploitation

Statute	Crime	Type of Offense
570.030	Stealing	Depending on the amount stolen, offense may be a Class B, C, or D felony
570.090	Forgery	Class C felony
570.130	Fraudulent use of a credit device	Class A misdemeanor unless \$500 or more, then a class D felony
570.135	Fraudulent procurement of a credit or debit card	Class A misdemeanor
570.145	Financial exploitation of the elderly and disabled	Less than \$50—class A misdemeanor; \$50 but less than \$500—Class D felony; \$500 but less than \$1,000—Class C felony; \$1,000 but less than \$50,000—Class B felony; \$50,000 or more—Class A felony
570.223	Identity theft	Depending on the amount appropriated through the identity theft, the offense may range from a Class B misdemeanor to a Class A felony
660.305	In-home services client misappropriation of property (includes falsification of service delivery	Class A misdemeanor

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documents)	
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Profiles of Victims and Perpetrators

Adult children victimize their parents in 60.4% of substantiated financial exploitation cases investigated by state adult protective services agencies. This is according to a 1998 National Center on Elder Abuse report. The primary reasons include the easy access adult children have to their mother or father or other elderly relatives, as well as the love parents have for their children—a love which can function to lower the potential victims’ suspicions and defenses. Grandchildren and other relatives also victimize their elderly loved ones in 19% of financial exploitation cases, followed by friends and neighbors at 8.7%. Those who commit the crime tend to be young or middle-aged: almost one-half are less than 40, while almost 40% are between 41 and 59.

Interestingly, an adult child will victimize a parent even if the parent is of humble means. Why? Access to the victim matters even more than the victim’s wealth. And it’s the victim’s vulnerability—due to frailty, illness, confusion or depression—as well as close proximity to the exploiter, that makes him or her an easy target.

Department of Health and Senior Services’ (DHSS) data reveals that **generally, a victim of financial exploitation:**

- **Is female (64%);**
- **Is Caucasian (79%)** (Although minority victims are disproportionately victimized compared to their representation in the 2000 Missouri census. The data shows that African-Americans are victims in 17.2% of the reports, compared to their 7.3% representation in Missouri’s population.);
- **Lives alone** (43%) or with a spouse or relative (42%);
- **May suffer from some form of dementia or physical impairment**, and often suffers from multiple limitations that make him or her dependent on others for care;
- **Tends to be isolated** (physically and/or socially);
- **May suffer from more than one type of abuse or neglect;**
- **May be reluctant to admit that his/her loved one is an abuser;** and,
- **May be afraid to report abuse, due to fears it could contribute to further abuse, nursing home placement, or even total abandonment.**

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Table 3 outlines those most likely to victimize and abuse the elderly and disabled. (*Source: Missouri Department of Health and Senior Services data*)

Table 3
Alleged Perpetrators of Abuse, Neglect, and Exploitation
for Fiscal Year 2003

Perpetrator	% of Reports
All relatives:	59.4%
Son/daughter	(28.6%)
Spouse	(9.9%)
Grandchild	(5.4%)
Parent	(4.0%)
Siblings	(3.5%)
Other relative	(8.0%)
In-home Service Provider	13.6%
Friend/neighbor	7.0%
Housemate	3.8%
Health care professional	1.6%
Landlord	1.4%
Other/unknown	13.2%

Table 4 illustrates that relatives who live with the elderly and disabled have the highest likelihood of victimizing and abusing their loved ones. (*Source: Missouri Department of Health and Senior Services data*)

Table 4
Alleged Perpetrators of Abuse, Neglect, and Exploitation
Who Live With the Victim, for Fiscal Year 2003

Perpetrator	% of Reports
All relatives:	84.8%
Son/daughter	(38.0%)
Spouse	(20.3%)
Grandchild	(7.0%)
Siblings	(4.0%)
Other relative	(15.5%)
Housemate	6.6%
Friend/neighbor	2.6%

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Other/unknown	6.0%
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Identity Theft

Every 79 seconds, a thief steals someone's identity, according to some news reports. Identity theft occurs when someone uses your personal information—Social Security, credit card, driver's license or savings and checking account numbers—without permission to commit fraud or other crimes. The Federal Trade Commission (FTC) estimates that 27.3 million Americans have been victims of identity theft in the last five years at a cost of \$53 billion per year.

Identity theft is just one form of financial exploitation. The elderly may be targeted for several reasons. Their trusting nature and tendency to give a seemingly caring person the benefit of the doubt and inexperience with the Internet make them susceptible. Second, some may be alone or isolated, often dependent on assistance from caregivers and advisors, because they have few or no family members. Third, some may have greater credit lines, home equity and financial resources than younger people. Fourth, their multiple health problems and visits to doctors and hospitals necessitate giving out information similar to that requested on a credit application. Unscrupulous health care employees may steal this information and use it for their gain. Fifth, the elderly often fail or refuse to get a second opinion and are too embarrassed to report an identity theft incident to family, friends, or law enforcement.

The consequences of identity theft are devastating for anyone, but the elderly, unlike the young, do not have 15 or 20 more income-earning years to recover. Once an elderly person's home or bank account has been lost or looted, these assets are generally irreplaceable.

Those who commit identity theft can vary widely in both organization and sophistication. The Social Security Administration notes that organized groups of identification thieves have been found operating inside banks, credit card companies, credit bureaus and nursing homes.

However, those who commit identity theft of the elderly and disabled most likely know their victim. Relatives (especially adult children of vulnerable seniors), in-home aides, home health workers, and friends are frequently in an elderly or disabled adult's home, and in an ideal position to loot their accounts, run up credit card debt, and establish new accounts in the elderly or disabled person's name without their knowledge.

Bank and credit union employees can help protect the elderly and vulnerable adults from financial exploitation, including identity theft, by watching for the warning signs on the next page.

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Warning Signs That Can Indicate Financial Exploitation

Financial exploitation may be occurring if a vulnerable adult:

- Makes numerous cash withdrawals from his or her checking account in a short period of time that are inconsistent with previous spending habits;
- Appears to have signed a check or document, but the signature looks forged, unusual or suspicious;
- Has several “out-of-sync” check numbers;
- Is concerned or confused about “missing funds” from his or her account;
- Is accompanied by a third party who is encouraging, pressuring or coercing him or her to withdraw a large sum of cash;
- Makes large withdrawals from a previously inactive account or a new joint account;
- Applies for a credit card for the first time;
- Has increased ATM or credit card activity or a sudden flurry of “bounced” checks;
- Fails to understand recently completed transactions;
- Makes sudden bank account changes that are unusual or uncharacteristic;
- Has credit card statements that are sent to an address other than the vulnerable adult’s home;
- Is accompanied by a stranger to whom the vulnerable adult looks for guidance or help in conducting business;
- Changes account beneficiaries;
- Changes property titles, deeds or other ownership documents;
- Refinances a mortgage;
- Makes abrupt changes in a will or trust;
- Makes abrupt and unexplained changes in a financial Power of Attorney;
- Has additional unexplained names on his or her signature card;
- Appears uncharacteristically unkempt, forgetful or disoriented.

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IV. WHAT FINANCIAL INSTITUTIONS CAN DO

They can:

- **Train** their employees to identify abuse and exploitation;
- **Designate** a staff person whom employees must notify when questionable or illegal financial transactions are occurring;
- **Report** suspected financial exploitation to the Department of Health and Senior Services (DHSS) or law enforcement;
- **Prevent** exploitation of their elderly and disabled customers by providing information on the safest way to manage money.

Financial exploitation often occurs in a bank or credit union when a victim comes in to cash a check or withdraw money. This means bank and credit union employees are often the first to realize financial exploitation is occurring. Other than the person committing the crime, they may also be the only ones to know. Vulnerable customers may trust employees they see frequently or have known a long time. Employees who know how to spot the warning signs listed on the previous page and what to do about them can help protect their vulnerable customers. They are the first line of defense against this crime, especially if bank or credit union policy recommends a follow-up phone call to DHSS or the police to report their suspicions.

Banks and credit unions should designate a staff person whom employees must notify when questionable or illegal financial transactions are occurring. The designee would determine if a call to the Department of Health and Senior Services (DHSS) or law enforcement is necessary. A protocol like this helps banks and credit unions control the release of information and ensures a call to DHSS or law enforcement is appropriate. Smaller financial institutions might choose a bank manager as the designee and larger institutions might select a security officer.

Preventing Financial Exploitation

Employee awareness is the key to detecting financial exploitation. If you're worried that one of your customers could become victimized:

- Explain your concern and emphasize your bank or credit union's commitment to protecting its customers.
- Empathize with him or her and validate his or her feelings.
- Ask clear, non-threatening factual questions.
- Assure your customer that he/she is not alone—many people are reluctant to reveal exploitation.

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- Do not say you are concerned because your customer is elderly or disabled.
- Do not let a person who accompanies your elderly or disabled customer speak for your customer. This is a sign that something may be wrong.

Preventing Financial Exploitation Through Appropriate Interventions

If confronted with a suspicious situation or transaction, use the techniques listed on the previous page and perform the following interventions in a courteous manner:

- **Learn the reason for large withdrawals.**

This is especially important if the withdrawal is unusually large for your customer. If your customer is accompanied by a suspicious third party and makes an unusually large withdrawal, ask him or her, rather than the suspicious person, the reason for the withdrawal. If the suspicious person does not let your customer speak, or tries to put words in his or her mouth, this is a red flag.

- **Carefully verify the authority of persons requesting to act for the customer.**

Financial exploiters often lie. They may claim to be your customer's guardian or possess a Power of Attorney. They may say your customer is unable to come to the bank or credit union and they're just helping out. Check all documentation presented by a person claiming to act on behalf of a vulnerable customer. Have a designated bank supervisor review all power-of-attorney papers for authenticity. If a signature or transaction appears suspicious, call the customer for verification.

- **Get photographic evidence of suspicious persons.**

A surveillance photograph may be the only way to identify a suspicious family member, friend, or stranger who accompanies a vulnerable adult to the bank.

A surveillance photograph can also disprove a suspect's claim that he never went to the financial institution to cash the forged checks or make withdrawals.

- **Write down a description of suspicious persons.**

After your customer and a suspicious third party leave your bank or credit union, write down a description of the suspicious person. Include the type of car he or she drives and the license number, if possible. Be as specific as possible.

- **Try to separate a vulnerable customer from a suspicious third party.**

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If a vulnerable adult is accompanied by a suspicious third party and appears frightened, intimidated or coerced, ask to speak with the vulnerable adult away from the suspicious third party.

Usher the customer to another location on the pretense of discussing private account information. As you do this, notify a colleague (or security) of the situation.

- **If a customer, or anyone accompanying him or her, objects to your actions.**

Ask the customer to speak with a manager or security to gain a better understanding of your actions. Repeat politely that the policies of the financial institution are intended to protect customers.

- **Consult with managers or security**

Financial institutions should establish clear guidelines regarding when employees must notify management or security about suspicious circumstances. However, employees should feel free to consult with managers or security anytime they feel uneasy.

- **Notify security AT ONCE**

Bank and credit union employees should notify security at once if they feel a vulnerable customer is in ANY immediate danger (i.e. before the customer leaves the bank or credit union).

Preventing Financial Exploitation Through Financial Counseling

Your vulnerable customers may make legitimate changes in their accounts, but through a means that is fraught with risk. You can suggest safer options that will lessen their risk of being exploited financially. Examples include:

- **A customer requests a large cash withdrawal to pay for a service or product.**

Recommend a cashier's check instead. It's more secure than carrying a large amount of cash. Your customer can place a stop payment on a cashier's check if it's lost or stolen. A cashier's check can also be traced if it's used to pay a contractor for an undelivered product or service, and offers greater protection for your customer.

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- **If a customer insists on a cash withdrawal.**

Warn him or her of the dangers of carrying cash. Make sure your customer understands the risks and inform him or her of alternatives.

- **A vulnerable adult comes to the bank to add a relative's name to his or her account because he or she believes a joint account avoids probate.**

Suggest a Payable on Death (POD) account. The beneficiary receives the money after the vulnerable adult dies but cannot access the account while the vulnerable adult is alive. There is no need for probate. Further, POD beneficiary designations are revocable at any time.

- **An elderly customer requests a joint account so that a friend or relative can assist with making deposits and paying bills.**

Suggest a direct deposit or an automatic bill-paying account instead.

A direct-deposit account allows an elderly customer's Social Security and retirement checks to be deposited directly. In fact, financial institution employees, with their elderly customer present, can call the local Social Security office and set up direct deposit for their customer's Social Security checks.

An automatic bill-paying account allows payments for public utilities, credit cards, and other bills to be withdrawn securely and automatically.

Both types of accounts prevent an unscrupulous friend or relative from withdrawing everything in a joint account.

- **In some instances, automatic bill paying may not be sufficient. Your customer may still need financial management help that a joint account owner can provide.**

Suggest that your customer open a new account with the joint account owner. Then help your customer set up an automatic monthly transfer to the new account to pay bills. This allows your customer to receive the help he or she needs with bill paying, but still keeps the balance of the account protected.

- **A customer has been exploited financially in the past and is an easy target for family or friends.**

Suggest and set up a "protected account" for the vulnerable adult, with his or her consent. The account is 'flagged' and any activity is closely watched. This is a good preventive intervention that can help protect financial resources. This option can be adapted to fit individual needs.

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Powers of Attorney (POA)—Helpful Information for Financial Institutions

A power of attorney (POA) is a legal document that authorizes one person to act on behalf of another in certain circumstances. For instance, some people may need help with finances and may authorize another person, who could be a relative, friend, or an accountant, to manage their money. Others may need help with medical decisions, and may authorize another person, usually a relative or friend, to handle their health care decisions.

There are different varieties of powers of attorney. Some are valid only when a person is competent. Others are valid and continue to be valid after a person becomes incapacitated. With few exceptions (e.g., autopsy, organ donation, or following the instructions of a court having jurisdiction over the decedent's estate), powers of attorney terminate when a person who has authorized another to act on his behalf dies, unless the power of attorney has been suspended, modified or terminated before that time. However, third persons may continue to rely on powers of attorney until they find out the principal has died or that the power of attorney has been suspended, modified, or terminated. It is important to remember that a competent person still has the right to override a person authorized to act on his or her behalf.

Financial institutions are not obligated to accept a power of attorney if it does not appear credible or there are suspicious circumstances. Employees should not let anyone fast talk or threaten them into accepting a questionable power of attorney. A forged or out-of-date power of attorney can be used to victimize elderly and disabled persons. A lot of fraud can be prevented if powers of attorney are scrutinized carefully. The protocol for handling powers of attorney should be taught and articulated clearly to financial institution employees who may be presented with a power of attorney.

If a stranger presents an employee with a financial power of attorney on a customer's behalf, and asks for a withdrawal from that customer's account, employees should follow their financial institution's protocol. Employees who are aware of circumstances that merit close review of a POA document should inform their supervisor or the person designated in the protocol. A closer review may entail having your bank's legal department review the power of attorney for authenticity. Perhaps your bank's legal department may even contact the law firm that drew up the power of attorney.

Misuse of a financial power of attorney is not a criminal offense, but may lead to crimes such as stealing and financial exploitation of the elderly and disabled. Misuse can cause a victim to lose financial independence and be dependent on others and/or the state for life.

Powers of Attorney--Important Terms

Agent—the person granted the power of attorney. Also known as the attorney-in-fact.

Attorney-in-fact—the person granted the power of attorney. Also known as the agent.

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Disabled person—an individual who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks the ability to manage his financial resources.

Fiduciary Duty—This is an obligation imposed on an attorney-in-fact by Section 404.714.1 of the Revised Missouri Statutes. A person who is appointed attorney-in-fact under a power of attorney, who undertakes to exercise the authority given in the power of attorney, must exercise the powers in the best interests of the principal, and avoid self-dealing and conflicts of interest. The attorney-in-fact must exercise a high degree of care in maintaining any estate plan the principal may have in place, including arrangements in place for disposition of assets upon death, ownership by joint tenancy or tenancy in the entirety, and arrangements by trust, will or codicil. The attorney-in-fact must exercise the authority granted in a POA with that degree of care that would be observed by a prudent person dealing with the property and conducting the affairs of another person, unless the POA document provides otherwise. However, attorneys-in-fact handling certain investments, or who have special skills, or were appointed based on a representation of special skills, are held to an even higher standard.

Incapacitated person—an individual who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that he lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness, or disease is likely to occur.

Power of Attorney (POA)—written authority legally authorizing an agent (the person granted the power of attorney) to act on a principal's (person giving the power of attorney) behalf. The agent is also often known as the attorney-in-fact. Only durable powers of attorney are valid after the principal becomes incapacitated. A power of attorney may be "springing," which means it goes into effect upon the occurrence of an event specified in the document.

Principal—the person giving the power of attorney. This person, by signing the power of attorney document, authorizes an agent (also known as the attorney-in-fact) to act on his or her behalf.

Types of Powers of Attorney

Durable Power of Attorney vs. Non-durable Power of Attorney:

Durable power of attorney—The durable power of attorney allows the attorney-in-fact to continue to act for the principal, even if the principal becomes disabled or incapacitated. Often an elderly parent will grant a durable power of attorney to a trusted adult child so that agent can act on his/her parent's behalf. A durable power of attorney in Missouri must contain the word "durable" in the title to the document, and must also state, in substance, "This is a durable power of attorney and the authority of my attorney-in-fact shall not terminate if I become disabled or incapacitated." A durable POA continues to be valid when the principal is incapacitated.

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Non-durable power of attorney—A power of attorney that is non-durable is no longer valid when the principal becomes incapacitated. Unless the power of attorney document contains the wording required to make it durable, it is non-durable.

Powers of Attorney May Be General, or Limited to Specific Matters:

General power of attorney—Since 1989 Missouri has allowed a “general” power of attorney that authorizes the attorney-in-fact to act for the principal across a wide scope of activities, including some financial activities. However, some powers must be specifically listed in order to be allowed. These include the power to execute, amend, or revoke any trust agreement; and to make or revoke a gift of property to or for the benefit of the principal. Section 404.710 of the Revised Missouri Statutes contains a full listing of the powers needing to be specifically listed.

Power of attorney for limited matters—a power of attorney may be limited to specific matters on which the attorney in fact is authorized to act for the principal, or may be limited to a specific period of time, or both. The POA document will specifically indicate the limitations.

As with all powers of attorney, a general POA or a limited POA may be durable or non-durable. If it is non-durable, it is valid only when the principal is competent.

Power of Attorney for Financial Matters vs. Power of Attorney for Health Care Decisions:

Power of attorney for financial matters—allows the agent to perform financial tasks for the principal such as paying bills, managing property, and handling money matters, including withdrawing funds from bank accounts and cashing checks. Most financial POAs will specify the scope of activities the attorney-in-fact may perform. However, there are some general powers of attorney (see below) that may not do so. It is important to keep in mind that a POA for financial matters does **not** give the attorney-in-fact the power to use the principal’s money for the attorney-in-fact’s own benefit. The agent must use the principal’s finances as the person would. A POA for financial matters is valid only when the principal is competent, unless the document contains the wording required to make it a durable power of attorney.

Power of attorney for health care decisions or medical power of attorney—This POA limits the attorney-in-fact to making medical and health care decisions for the principal and conveys no authority to the attorney-in-fact to make any financial decisions or transactions for the principal. The POA goes into effect when two physicians certify the principal is incompetent, unless the document states only one physician needs to make the certification.

Springing power of attorney—This is a power of attorney that only goes into effect when some event or condition, stipulated in the document, occurs. If the principal’s incapacity or disability is the event activating the authority, a physician’s written statement attesting to the principal’s

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incapacity or disability should accompany this document. If the springing event is the principal's incapacity or disability, the springing power of attorney should contain the wording required to make it durable. A springing POA may be general, or it may be limited to specific matters. A springing POA may be for financial matters or for health care decisions.

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V. HOW AND WHERE TO REPORT FINANCIAL EXPLOITATION

Abuse, Neglect, and Exploitation

If you suspect one of your elderly or disabled customers is being exploited financially, call the Department of Health and Senior Services' (DHSS) toll-free hotline:

Elder Abuse and Neglect Hotline

1-800-392-0210

Your confidentiality will be protected under Missouri law. The only way your name can be released is with your permission or by court order (660.623, RSMo). You can't get into any trouble as long as you fairly report your concerns.

Provide as much identifying information as possible when making the call, such as:

- Names, addresses, and daytime phone numbers of the alleged victim and perpetrator, any witnesses, information regarding the victim's age or disability, and your daytime phone number.
- A thorough explanation of what happened. Include the nature and date(s) of the incident, if law enforcement is involved, and any other information that may help the investigation. Information like bank account numbers and balances are not required at the time of your initial call.

Situations of Immediate Risk

If you think your customer is in immediate danger, call the police! Law enforcement can offer your customer immediate protection.

Your customer may also need help from Adult Protective Services (APS). APS is part of DHSS. APS helps seniors and disabled adults who are unable to manage their own affairs or protect themselves from harm. (See page 17 for more on APS).

Once your customer's safety has been secured by law enforcement, you may make a call to the DHSS elder abuse and neglect hotline. DHSS staff will then determine if your customer needs help from APS.

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Attorney General's Consumer Protection Hotline

A scam may be reported to the Attorney General's Consumer Protection Hotline. The purpose of the hotline is to investigate alleged violations of the State consumer fraud law (Chapter 407 RSMo), and pursue legal proceedings to protect Missourians from illegal advertising and sales practices. Investigators also serve as mediators to work out billing disputes between merchants and consumers. The operating hours for the hotline are from 8:15 a.m.-5:00 p.m. Monday through Friday, except State holidays.

Consumer Protection Hotline

1-800-392-8222 or on-line at consumer@ago.mo.gov

Some examples of the types of situations investigated by the Attorney General's Office include:

- Telephone fraud and billing problems;
- Car repair and sales disputes and rip-offs;
- Telemarketing, Internet and e-mail scams;
- Financing – banking and credit card fraud and disputes;
- Home repair, remodeling and construction scams and rip-offs;
- Pyramid schemes and phony business opportunities;
- Travel scams and timeshares.

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VI. MISSOURI ADULT PROTECTIVE SERVICES

What is Adult Protective Services (APS)?

Some elderly and disabled people are unable to manage their own affairs, carry out activities of daily living, or protect themselves from abuse, neglect or exploitation. But they still have preferences about the way they want to live and the type of care they receive.

Missouri's Adult Protective Services (APS) protects their rights and provides them protective services with their consent. But APS does so in a climate that promotes independence and self-determination, making sure that individuals have choices, input into their care, and know there are quality alternatives to institutional care.

Missouri's Department of Health and Senior Services (DHSS) serves as the Adult Protective Services agency and is mandated to investigate reports of abuse, neglect, or exploitation. The law requires DHSS to conduct investigations and authorizes the gathering and exchange of information from different sources and agencies.

The rights of senior and disabled adults include:

- the right to confidentiality;
- the right to participate in the care plan;
- the right to self determination;
- the right to protection;
- the right to receive assistance;
- the right of the state to intervene;
- the right to refuse services; and,
- the right to refuse medical treatment.

What Happens When You Call DHSS?

When you call DHSS's Elder Abuse and Neglect Hotline, you'll be asked to give your name, business telephone and address. You'll also need to give the same contact information about the alleged victim and who you think is taking advantage of him or her. You'll be asked to describe the incident or allegation.

Your call may generate an immediate response from DHSS if the alleged victim is in immediate danger. For other callers, it may take DHSS longer to respond. Either way, a DHSS investigator will follow up and contact you and your financial institution for more information. He or she may ask you to describe the behavior between the alleged victim and perpetrator, show signatures on the alleged victim's checks and verify account transaction amounts and dates. The DHSS investigator will also interview your elderly or disabled customer, the alleged perpetrator

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and any witnesses. Information about your customer's age or disability is helpful. By law, DHSS can proceed with an investigation only if it has reason to believe the alleged victim is at least 60, or disabled and between 18 and 59.

During the investigation, the DHSS employee will take whatever steps are necessary to protect your customer. If DHSS substantiates the financial exploitation allegation, it must make a report to law enforcement and the county prosecutor (565.186, RSMo). DHSS also determines if your customer needs help from Adult Protective Services (APS).

A special unit within DHSS investigates some of the more complex cases of financial exploitation. It's called the Office of Special Investigations.

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VII. REAL-LIFE CASES

Case #1—

Mrs. Bednarski, 72, has mild dementia, although she can still appear to function fairly well, especially in brief, superficial interactions. She is very small, fragile, and somewhat unkempt.

One day, Mrs. Bednarski went to her small town bank to have her daughter's name taken off her account. With some hesitation, she told the bank teller that her daughter was "stealing her money." Mrs. Bednarski was crying as she said this.

A short time later, Mrs. Bednarski and her daughter came back to the bank. Mrs. Bednarski wanted her daughter's name back on the account. The deeply suspicious bank teller did not want to honor the request and asked Mrs. Bednarski if everything were OK. Mrs. Bednarski said, "Yes, everything has been straightened out," as her daughter stood by her side.

The teller notified bank officials about her suspicions, but no one called the Department of Health and Senior Services' Elder Abuse and Neglect Hotline to report possible financial exploitation. The bank thought it would violate a customer's confidentiality by making the call.

Later, Mrs. Bednarski's relative called the hotline to relay her suspicions, which prompted an Adult Protective Services (APS) investigation. The bank finally cooperated after it learned APS is mandated to investigate reports of abuse, neglect, or exploitation, and that the law authorizes the gathering and exchange of information from different sources and agencies. Now the bank is doing everything it can to help and is relieved someone is looking into the situation.

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Case #2—

Emily and Staci, the adult children of Edna and Vernon Shackleford, squabbled about their parents' finances. As beneficiaries, they feared their parents' recent expenditures would reduce their inheritance.

The Shacklefords had an account at a small town bank. Mrs. Shackleford suffered from mild dementia and didn't always function well. It was easy to get her to say or do whatever someone wanted. Mr. Shackleford always took care of their banking.

One day, Emily took her mother out for a day trip without telling anyone, and persuaded her mother to withdraw \$6000 from her and Mr. Shackleford's joint account. Though the bank employee knew that Mr. Shackleford always did the banking, she honored the request.

However, the employee suspected things were not right. She talked to the manager designated to review cases involving possible financial exploitation. Together, they called the Elder Abuse and Neglect Hotline, which prompted an Adult Protective Services (APS) investigation.

Mr. Shackleford was indignant at Emily's actions. He filed a police report and said he wanted to press charges against Emily. While it wasn't clear if any charges would ever be filed, APS talked with the Shacklefords, Staci and Emily. Mr. Shackleford and Staci both wanted the money returned.

In exchange for a promise of no prosecution, Emily made restitution by returning the \$6,000.

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Case #3—

Mr. Parish is a disabled veteran in his 70s. Troubled by alcoholism and mild dementia, he still appears to function well in superficial exchanges. He is easily manipulated, especially when he has been drinking.

Two sisters befriended Mr. Parish. Over a fairly short period of time, each took a turn as his fiancée. Mr. Parish's financial institution noticed these women drove Mr. Parish through the drive-up window to make frequent cash withdrawals—sometimes several times a day. When questioned by the teller, Mr. Parish said he couldn't remember how often he made withdrawals.

The financial institution's manager, the one designated to review suspected exploitation cases, was informed of the situation and agreed the teller should call the Elder Abuse and Neglect Hotline. The teller gave the women's names, explained the situation and said Mr. Parish couldn't remember details of his account or that he sometimes made several withdrawals daily.

Adult Protective Services (APS) interviewed the key individuals in this case and gathered records. Even when presented with these records, Mr. Parish could not remember making most of the withdrawals from his account or how much money he had. Mr. Parish did know that his "girlfriend" gave him a ride to the bank at the first of each month when he got his check.

After gathering as much evidence as possible, this case was turned over to law enforcement for possible prosecution. In an effort to enable Mr. Parish to live as independently as possible, Adult Protective Services is now helping Mr. Parish obtain a conservator so that his money can be managed appropriately.

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VIII. STATUTORY BASIS FOR MOSAFE AND PROTECTION OF REPORTERS

State and federal laws both permit and/or offer protection to financial institutions and their employees who make good-faith reports of suspected financial exploitation to state agencies such as the Missouri Department of Health and Senior Services (DHSS).

Federal Law

In 1999 the Financial Services Modernization Act (often known as the Gramm-Leach-Bliley Act or GLBA) was passed. The GLBA contains strong privacy protection. It requires notification to customers before disclosures of their records and an opportunity to disapprove the proposed disclosure. However, Section 502(e) of the GLBA contains exceptions to this privacy protection. Three are relevant to state reporting programs:

- (e)(3)(B) permits disclosure “to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability.”
- (e)(5) permits disclosure “to the extent specifically permitted or required under other provisions of law. . .to law enforcement agencies...or for an investigation on a matter related to public safety.
- (e)(8) permits disclosure “to comply with Federal, State, or local laws, rules, and other applicable legal requirements[.]”

In 2002, the Michigan state agency responsible for Adult Protective Services (APS) asked the federal agencies having oversight of financial institutions covered by GLBA whether Section 502(e) permitted disclosure of nonpublic personal information to the state agency. The Michigan APS agency had protocol agreements with the financial institutions relating to reporting suspected financial exploitation. These federal oversight agencies, the

- Federal Reserve System,
- National Credit Union Administration,
- Office of Thrift Supervision,
- Bureau of Consumer Protection, Federal Trade Commission,
- Federal Deposit Insurance Corporation,
- Officer of the Comptroller of the Currency, and
- Securities and Exchange Commission,

responded in a joint letter. The letter gave the opinion that disclosure of consumers’ nonpublic personal information in reports to Michigan’s APS agency falls within GLBA’s exceptions Section 502(e) and regulations of the federal oversight agencies.

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Missouri's DHSS has not developed reporting protocol agreements such as the Michigan agreements. Nevertheless, Missouri laws establish the criminal offenses of financial exploitation (see Section 570.145, RSMo Supp. 2004) and elder abuse (see Sections 565.180 – 565.184, RSMo). Financial institution reporting of suspected violations of these laws to DHSS is permitted under Missouri law (see discussion below). These laws may substitute for the reporting protocol agreements in Michigan. Therefore, reporting suspected violations of these laws in order to protect against fraud or unauthorized transactions is likely to be permitted by Section 502(e)(3)(B) of the GLBA. Reporting suspected violations of these laws may also constitute reporting permitted for investigation of a matter related to public safety under Section 502(e)(5) of the GLBA.

Summary and Conclusion—Federal Law: A strong argument may be made that there are no federal statutory obstacles to participation in MOSAFE. Financial institutions that participate in reporting should have no reason to fear liability under federal law: While customers have a right to privacy, Section 502(e) of the GLBA contains exemptions that should permit voluntary reporting by financial institutions to Missouri's DHSS when the reports are made in order to protect against fraud, unauthorized transactions or as permitted under Missouri law for investigation of a public safety matter.

Missouri Law

Two Missouri statutes permit financial institution employees to report suspected financial exploitation to DHSS and provide immunity to any reporter making a good-faith report.

Sections 565.188-.190, RSMo

- **Who Shall or May Report?**

Section 565.188, RSMo lists a series of mandated reporters who, if they have “reasonable cause to suspect” an elder has or is being subjected to abuse or neglect, shall make a report to the Department of Health and Senior Services. Employees of financial institutions are not included in that list, and, thereby, are not mandated to report.

However, the law also states: “Any other person who becomes aware of circumstances which may reasonably be expected to be the result of or result in abuse or neglect may report to the department.” Hence, employees of financial institutions may voluntarily report suspected abuse and neglect, including financial exploitation.

- **Immunity**

The law, in Section 565.190, states that “any person, official or institution” complying with the above reporting statute (565.188) “in the making of a report or in cooperating with the department in any of its activities” involved in the investigation of the report (565.186) “shall be immune from any civil or criminal liability for making such a report, or in cooperating with the department” unless the report is malicious.

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- **Sharing Confidential Information**

DHSS must investigate reports required by the above statute. The statute, by conferring immunity from civil or criminal liability on reporters who cooperate with the Department, contemplates the reporter will continue to cooperate with DHSS during the course of the investigation.

Section 408.690.12, RSMo

This law provides exemptions to the Missouri Right to Financial Privacy Act.

- **What is Reportable?**

The Right to Financial Privacy Act, Sections 408.675 through 408.700, RSMo, generally prohibits financial institutions from disclosing confidential customer information to state agencies absent the customer's consent or a subpoena. However, some disclosures are not prohibited. The relevant exception to the prohibition on disclosure is in Section 408.690.12, RSMo. This subsection permits a financial institution or its officers, employees, or agents to notify a state agency that they have information which may be relevant to a possible violation of any statute or regulation. The most relevant statutory violation that would be reportable involves the crime of financial exploitation of the elderly and disabled. This offense is established by Section 570.145, RSMo Supp. 2003.

- **Who May Report?**

Section 408.675(2), RSMo defines "financial institution" to include banks, savings and loan associations, trust companies, and credit unions, among other entities. These entities would be the most likely ones to become aware of misappropriation or theft of funds or property belonging to a customer.

- **Immunity**

Any financial institution, officer, employee, or agent of a financial institution is protected from liability to a customer under state law or regulation for disclosure pursuant to Section 408.690.12, RSMo and for failing to notify the customer of the disclosure.

- **Sharing Confidential Information**

Under Section 408.690.12, RSMo, information which may be relevant to a possible violation of a statute or regulation may be disclosed to a government authority notwithstanding any law or regulation of Missouri or a political subdivision to the contrary.

Summary and Conclusion—State Law: Financial institutions may participate in MOSAFE under state law. Since their employees are in a unique position to recognize the signs of financial exploitation, they can play a vital role in protecting vulnerable customers by reporting suspected transactions or attempted transactions to DHSS.

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IX. GLOSSARY

Key Terms

Abuse—The infliction of physical, sexual, or emotional injury or harm including financial exploitation by any person, firm or corporation. (660.250, RSMo)

Eligible adult—Any person sixty years of age or older who is unable to protect his or her own interests or adequately perform or obtain services which are necessary to meet his or her essential human needs or an adult with a disability between the ages of 18 and 59 who is unable to protect his or her own interests or adequately perform or obtain services which are necessary to meet his or her essential human needs. This is the population that the Missouri Department of Health and Senior Services has been given the statutory authority to investigate. (660.250, RSMo)

Neglect—The failure to provide services to an eligible adult by any person, firm or corporation with a legal or contractual duty to do so, when such failure presents either an imminent danger to the health, safety, or welfare of the client or a substantial probability that death or serious physical harm would result. (660.250, RSMo)

Reported adult—A term used by the Department of Health and Senior Services, Division of Regulation and Licensure, to define the person who is the victim of a hotline report to the Central Registry Unit. According to the statutes under which MOSAFE operates, DHSS can only investigate reports involving those individuals meeting the definition of “eligible adult” as cited above.

Undue influence—A form of psychological mistreatment. It is when a person in a position of power or trust uses their role to (influence) deceptively gain control over the decision making of another and may be accompanied by fraud, duress, threats or intimidation/pressure. Undue influence includes unfair conduct, emotional dependency and improper use of power so that the decision or action is not a free and voluntary act. An example of undue influence is when a caregiver exerts undue influence over an elder woman suffering from the early stages of Alzheimer’s disease. In this situation, the caregiver tells the elderly woman that she will not care for her anymore if the elderly woman does not sign the deed to her house over to the caregiver.